

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

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Claimant

VS.

DILLON COMPANIES INC.

Respondent

Self-Insured

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Docket No. 264,112

ORDER

Respondent appeals the November 1, 2001, preliminary hearing Order of Administrative Law Judge Brad E. Avery. Claimant was awarded temporary total disability compensation beginning July 20, 2001, and continuing until further order or until claimant is certified as having reached maximum medical improvement, released to a regular job or returns to gainful employment, whichever comes first. Claimant was further awarded medical treatment at respondent's expense with Joseph G. Sankoorikal, M.D., until further order or until certified as having reached maximum medical improvement.

ISSUES

Respondent lists the issues in its application as follows:

- "(1) Whether the Administrative Law Judge exceeded his jurisdiction in granting the claimant additional medical treatment.
- "(2) Whether the Administrative Law Judge exceeded his jurisdiction in designating Dr. Sankoorikal as the authorized treating physician.
- "(3) Whether the Administrative Law Judge exceeded his jurisdiction in denying the respondent the opportunity to provide a list of three authorized [sic] treating physicians.
- "(4) Whether the Administrative Law Judge exceeded his jurisdiction in awarding the claimant temporary total disability compensation commencing July 20, 2001, until further order or until certified as having reached maximum medical improvement.

"(5) Whether the Administrative Law Judge exceeded his jurisdiction in backdating the award of temporary total disability compensation to the claimant prior to the claimant's application for hearing (September 13 [sic], 2001)."

The compensability of this matter was not disputed at the preliminary hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds as follows:

K.S.A. 1998 Supp. 44-551(b) provides that the Appeals Board shall not review a pending preliminary hearing order entered by an administrative law judge unless it is alleged that the administrative law judge exceeded his jurisdiction in granting or denying the relief requested.

K.S.A. 1998 Supp. 44-534a lists the following disputed issues as jurisdictional and subject to review by the Appeals Board:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

These above shall be considered jurisdictional and subject to review by the Appeals Board.

K.S.A. 1998 Supp. 44-534a grants the Administrative Law Judge the authority to grant or deny temporary total disability compensation and to provide medical treatment from a preliminary hearing pending a full hearing on the claim. The issues dealing with claimant's entitlement to temporary total disability compensation and medical treatment are not jurisdictional issues which allow for appeals from preliminary hearings pursuant to K.S.A. 1998 Supp. 44-534a or K.S.A. 1998 Supp. 44-551.

Respondent contends the Administrative Law Judge exceeded his jurisdiction in designating Dr. Sankoorikal as the authorized treating physician while denying respondent

the opportunity to provide a list of three treating physicians. The Board has held in the past and continues to hold that the decision to change physicians without first allowing respondent to provide a list of three physicians is not a question which goes to the jurisdiction of the administrative law judge. The Board is without jurisdiction to consider this issue on appeal from a preliminary hearing. Graham v. Rubbermaid Speciality Products, WCAB Docket No. 219,395 (June 1997).

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide is wrongly. Allen v. Craig, 1 Kan. App. 2d 301, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977); *see also* Taber v. Taber, 213 Kan. 453, 516 P.2d 987 (1973); Provance v. Shawnee Mission U.S.D. No. 512, 235 Kan. 927, 683 P.2d 902 (1984).

The Board concludes that the issues raised by respondent in the above matter are not issues over which the Board takes jurisdiction on an appeal from a preliminary hearing. Therefore, the appeal of the respondent in the above matter should be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Brad E. Avery dated November 1, 2001, remains in full force and effect and the appeal of the respondent in this matter should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of January 2002.

BOARD MEMBER

c: Jack L. Heath, Attorney for Claimant
Scott J. Mann, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director